

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:08CR3072
)	
v.)	
)	
ELISEO GARCIA-JIMENEZ,)	MEMORANDUM AND ORDER
)	
Defendant.)	
)	

This matter was removed from the trial docket when the defendant indicated he wanted to enter a plea of guilty. See filing no. [33](#). Further, the court excluded the Speedy Trial Act time between the date of that order December 30, 2008 and the "anticipated plea of guilty." The hearing on defendant's anticipated guilty plea was begun on January 7, 2009, but not completed, for the reason that during that proceeding it became apparent that the parties' respective beliefs about the existence of a plea agreement were not, in fact, reflective of a "meeting of the minds." Therefore, the hearing was recessed until counsel could either agree on a plea agreement or agree to disagree and set the matter for trial.

Plaintiff has filed a "Motion to Continue Trial Date." The motion is a misnomer, as no trial setting is extant. I shall consider the motion as one to set trial. So considered, the motion will be granted. Since the earlier hearing on defendant's anticipated plea of guilty was not completed, I shall also order that hearing adjourned. Finally, despite defendant's objection to the "continuance," I shall set a trial date and exclude time under the Speedy Trial Act, for the reason that counsel need a reasonable amount of time to prepare for trial, considering the nature of the case and diligence of counsel.

IT THEREFORE HEREBY IS ORDERED:

1. The hearing on the defendant's anticipated plea of guilty, commenced January 7, 2009, is adjourned.

2. The motion for continuance, filing no. 36, construed as a motion to set for trial, is granted. Trial is set to commence at 9:00 a.m. on February 23, 2009, for a duration of five days before the Honorable Richard G. Kopf in Courtroom 1, United States Courthouse and Federal Building, 100 Centennial Mall North, Lincoln, Nebraska. Jury selection will be held at commencement of trial

3. The ends of justice will be served by granting such a motion, and outweigh the interests of the public and the defendant in a speedy trial, and the additional time arising as a result of the granting of the motion, the time between January 13, 2009 and February 23, 2009 shall be deemed excludable time in any computation of time under the requirements of the Speedy Trial Act, for the reason that the parties require additional time to adequately prepare the case, taking into consideration due diligence of counsel, the novelty and complexity of the case, and the fact that the failure to grant additional time might result in a miscarriage of justice.
18 U.S.C. § 3161(h)(8)(A) & (B).

DATED this 13th day of January, 2009.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge